

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ AUG 2 - 2005 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

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JOHN FRASER, A90-234-737/ #740-5,  
*also known as Andrew Burrell*

Petitioner,

04 CV 0733 (SJ)

-against-

**ORDER**  
TRANSFERRING  
CASE AS PETITION  
FOR REVIEW  
PURSUANT TO RIDA

JOHN ASHCROFT et al.,

Respondents.

-----X  
A P P E A R A N C E S:

JOHN FRASER  
#42103-053  
A90-234-737/ #740-5  
Etowah County Detention Center  
827 Forrest Avenue  
Gadsden, AL 35901  
Petitioner *Pro Se*

ROSLYNN MAUSKOPF  
United States Attorneys Office  
Eastern District of New York  
147 Pierrepont Street  
Brooklyn, NY 11201  
By: Steven J. Kim  
Attorney for Respondents

JOHNSON, Senior District Judge:

Petitioner *pro se* John Fraser filed a petition for a writ of habeas corpus pursuant to  
28 U.S.C. § 2241, challenging the lawfulness of an administratively final removal order.

Section 106(c) of the REAL ID Act of 2005 ("RIDA"), Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005), provides that an action brought pursuant to 28 U.S.C. § 2241 which challenges a final administrative order of removal, and which was pending on the date of RIDA's enactment on May 11, 2005, shall be transferred to the court of appeals for the circuit in which a petition for review could have been properly filed pursuant to section 242 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1252, as amended by RIDA § 106.

Accordingly, the following orders are hereby entered:

- (1) This case is transferred in its entirety, pursuant to RIDA § 106 (c), to the United States Court of Appeals for the Second Circuit, as a petition for review;
- (2) the Petitioner's removal is stayed pending further order from the Court of Appeals;
- (3) the entire record of proceedings before the District Court is hereby transferred to the United States Court of Appeals for the Fifth Circuit.<sup>1</sup>

SO ORDERED.

Dated: July 28, 2005  
Brooklyn, NY

s/SJ

Senior U.S.D.J.

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<sup>1</sup> The Court finds Petitioner's objections to the RIDA transfer to be without merit.

In addition, to the extent that Petitioner is challenging his present physical detention at the Etowah County Detention Center ("ECDC"), the Court deems the proper respondent to be the ECDC warden. This Court does not have personal jurisdiction over the ECDC warden and therefore, that part of Petitioner's habeas petition challenging his physical confinement is transferred to the Northern District of Alabama.